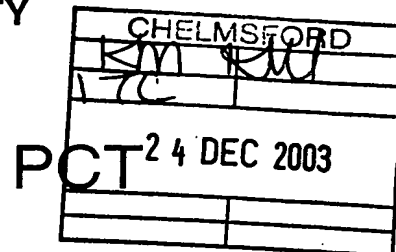


# PATENT COOPERATION TREATY

From the  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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WRITTEN OPINION  
(PCT Rule 66)

Date of mailing (day/month/year) 19.12.2003	
Applicant's or agent's file reference P/63625/GPTU64	<b>REPLY DUE</b> within 3 month(s) from the above date of mailing
International application No. PCT/IB03/01469	International filing date (day/month/year) 18.03.2003
Priority date (day/month/year) 23.03.2002	
International Patent Classification (IPC) or both national classification and IPC H04Q11/00	
Applicant MARCONI COMMUNICATIONS GMBH et al.	

1. This written opinion is the **first** drawn up by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
  - I ☒ Basis of the opinion
  - II ☐ Priority
  - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - IV ☐ Lack of unity of invention
  - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - VI ☐ Certain documents cited
  - VII ☐ Certain defects in the international application
  - VIII ☐ Certain observations on the international application
3. The applicant is hereby **invited to reply** to this opinion.
 

**When?** See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

**How?** By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

**Also:** For an additional opportunity to submit amendments, see Rule 66.4.  
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.  
For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 23.07.2004

Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Pais Gonçalves, A Formalities officer (Incl. extension of time limits) Kastlova, A Telephone No. +49 89 2399-2348
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**I. Basis of the opinion**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

**Description, Pages**

1-16 as originally filed

**Claims, Numbers**

1-14 as originally filed

**Drawings, Sheets**

1/4-4/4 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims	1,3,9
Inventive step (IS)	Claims	
Industrial applicability (IA)	Claims	

**2. Citations and explanations****see separate sheet**

The following document (D) is referred to in this written opinion:

D1: WO 01 74111 A

1. The present application contains three independent claims (1, 3 and 9) relating to a unique optical cross-connect essentially having **identical scope**.
  - 1.1 Thus the claims as a whole are **not clear and concise** and hence the requirements of Article 6 PCT are not met.
  - 1.2 Having regard to the requirements of Rule 6.4(a) PCT, it is considered appropriate in the present case to use only one independent claim corresponding to this single category and dependent claims as appropriate.
2. Notwithstanding the above-expressed clarity objection, it should be noted that the essential features of Claims 1, 3 and 9 are contained in D1 (see in particular abstract) which discloses a similar optical cross-connect for use in WDM comprising a multi-stage switching matrix comprising several switching matrices for adding/dropping according to the wavelength.
  - 2.1 Therefore, the subject-matter of claims 1, 3 and 9 is **not new**, Article 33 (1), (2) PCT.
  - 2.2 Furthermore, it should be noted that, even if novelty of claims 1, 3 or 9 could be argued based on minor differences between their subject-matter and the disclosure of D1, this subject-matter would still not involve an inventive step, Article 33 (1), (3) PCT, taking into account that D1 discloses the same object and the same type of solution as presently claimed, namely for providing a routing of through optical signals with an add/drop facility.
3. The additional features of the dependent claims seem to relate to minor design details and/or implementation measures, which are known or directly derivable from document D1 or constitute normal practice of a person skilled in the art.
  - 3.1 These claims thus, either alone or in combination, do not seem to add anything new or of inventive significance to any of the previously-referred claims.

4. Having regard to the above objections, it is not clear at present which part of the application could serve as a basis for a new and inventive subject-matter.
- 4.1 Should the Applicant nevertheless regard some particular matter of the application as having an inventive contribution over the prior art, then an independent claim relating to such subject-matter should be filed. The Applicant is also requested to indicate in the letter of reply the difference of said subject-matter vis-à-vis the state of the art and the significance thereof.
- 4.2 The above-cited document **D1** should be **acknowledged** and briefly discussed in the opening part of the description, Rule 5.1 (a) (ii) PCT, making clear any inventive contribution of the claimed invention over the prior art.
- 4.3 Although being drafted in a two-part form as recommended by Rule 6.3 (b) (ii) PCT, the independent claims do not correctly reflect the prior art of document D1 because they do not contain in their pre-characterizing part all features known from D1 (refer to point 2 above).
- 4.4 The opening part of the description should be modified to bring it into agreement with the amended claim, Rule 5.1(a)(iii) EPC.
- 4.5 In addition to above-referred objections, Figures 2 and 3 of the drawings do not fulfil the requirements of Rule 11.13(h) PCT.